



United States
Department of
Agriculture

Food and
Nutrition
Service

Mountain
Plains
Region

1244 Speer Boulevard
Denver, CO 80204

Reply to
Attn. of:

SFSP-132

AUG 28 1991

Subject: Noncompetitive Agreements between Summer Food Service Program (SFSP) Sponsors and School Food Authorities (SFAs)

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Montana OPI,
(Special Nutrition Programs) Nebraska ED, North Dakota, South Dakota,
Utah, and Wyoming DHSS

Section 13(a)(2) of the National School Lunch Act states that, "To the maximum extent feasible . . . any food service under the [SFSP] shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools." The intent of this legal provision is incorporated in the SFSP Regulations at Section 225.15(b)(1), which further interprets Section 13(a)(2). These Sections permit SFSP sponsors to enter into agreements with SFAs outside of the normal competitive procurement process mandated by the Office of Management and Budget Circulars, 7 CFR Part 3015 of the Department's Uniform Federal Assistance Regulations, and Sections 225.15(g) and 225.17 of the SFSP Regulations. This memorandum will clarify the circumstances under which SFSP sponsors may and may not enter into noncompetitive agreements with SFAs.

It is important to clarify that we expect any such agreements between SFSP sponsors and SFAs to be consistent with the dictates of good management practice. We expect that SFSP sponsors exercising the authority to enter into noncompetitive agreements with SFAs will do so only when they are convinced that the SFA will provide them with a quality meal service at a reasonable price. The law and Regulations in this area are predicated on the assumption that, by virtue of their staff's expertise gained during the school year, self-preparation SFAs will provide high-quality meals at a lower price to sponsors who are not able to prepare their own meals. There is no requirement that SFSP sponsors always contract with a self-preparation SFA who wishes to provide SFSP meal service. If the SFA has not performed to the satisfaction of the sponsor, or if the sponsor is aware of commercial food service alternatives which may be better suited to its needs, the sponsor should conduct a competitive procurement for its SFSP food service needs. Consistent with the law's preference that SFSP sponsors obtain their meals from self-preparation SFAs "to the maximum extent feasible", the SFSP sponsor seeking competitive bids from commercial food service management companies (FSMCs) should document its reasons for seeking competitive bids when a self-preparation SFA has indicated its interest in providing meals.

It has recently come to the Department's attention that a number of SFSP sponsors in various regions have mis-interpreted the foregoing requirements to permit their entering into noncompetitive contracts with SFAs which obtain their food service from a commercial FSMC. Once the SFA contracts with a commercial FSMC for the provision of meals, the assumptions which previously justified bypassing normal competitive procurement requirements are undermined. Clearly, other potential commercial providers might believe themselves capable of providing SFSP meal service at a competitive price and would likely view the method by which the SFA's FSMC obtained its SFSP contract (through a third party, the SFA with which the FSMC had contracted) as an evasion of the requirements for free and open competition at Section 225.17 of the Regulations. Since SFA would lack any effective management control over the food service provided by the FSMC to the sponsor, we would question the feasibility and wisdom of any contract under which the SFSP sponsor did not contract directly with the actual provider of the SFSP meal service.

Finally, noncompetitive arrangements between an SFSP sponsor and an SFA which utilized an FSMC would violate other aspects of the Part 225 Regulations as well. For example, the SFA would be violating the provisions of Section 225.6(h)(2)(ii), which prohibits FSMCs from subcontracting for the total meal or the assembly of the meal (when an SFSP sponsor procures meals from an SFA which uses an FSMC, the SFA becomes the FSMC vis a vis the SFSP sponsor). Furthermore, were SFAs are allowed to act as intermediaries for commercial FSMCs, it could potentially lead to situations where the actual provider of the SFSP meal service (the commercial FSMC) could not meet the normal bonding, registration, or other requirements established for FSMCs at Section 225.15(g) of the Regulations.

Therefore, SFSP sponsors have two options for obtaining their meals for the 1992 SFSP: either (a) competitively procure meals from the lowest bidder; or (b) enter into an agreement for food service with an SFA which does not obtain meals or management services from an FSMC. Your office should incorporate this information in your training and guidance materials for next year's SFSP.

Please contact our office at (303) 844-0359 if you have any further questions regarding this subject.

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